Supreme Court, U.S.
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NO._____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1993

STATE OF ALABAMA,

PETITIONER,

V.

DANIEL MCREYNOLDS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

PETITION OF THE STATE OF ALABAMA

OF

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ATTORNEY GENERAL

AND

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30 pp

QUESTION PRESENTED

Where a police officer on one day receives a "tip" from a known, confidential informant to the effect that a suspect -- who is also known the officer -- has just received a shipment of drugs, and on the following day the officer receives a second "tip" from the same informant to the effect that the suspect in question is at that moment out on the streets making deliveries of the drugs which had been received the previous day, and where, shortly thereafter, in the context of attempting to corroborate these tips: first, the police officer observes the suspect parked in his car on a street \corner engaged with a pedestrian in what could reasonably be interpreted by the officer as a "suspicious" activity; and, second, the police officer observes the suspect and the pedestrian next engaged in what could reasonably be interpreted as a "furtive" movement once the suspect and the

pedestrian realized they were being watched -- was the police officer possessed at that point in time of sufficient "reasonable suspicion" under the totality of the circumstances so as to effect a "Terry"-type investigative stop of the suspect's automobile?

THE PARTIES

In the Circuit Court of Dallas County, Alabama, the Alabama Criminal Appeals and the Supreme Court, the parties were Daniel McReynolds, who is Respondent herein, as Defendant, Appellee, and Respondent, respectively, and the State of Alabama, who is Petitioner herein, as Plaintiff, Appellant, and Petitioner, respectively.

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PETITION OF THE STATE OF ALABAMA

The State of Alabama, Your Petitioner, respectfully prays that a writ of certiorari issue to review the opinions and orders of the Supreme Court and Court of Criminal Appeals of the State of Alabama in the above cause.

OPINIONS AND ORDERS BELOW

The Order of the Circuit Court of Dallas County, Alabama, overruling Respondent McReynolds' motion to suppress certain physical

evidence introduced against him at his trial is not reported and was not issued in written form. An excerpt from the record of Respondent McReynold's trial which contains a transcript of the hearing on Respondent's motion to suppress and the trial court's ruling on that motion is submitted as Appendix "A" to this petition.

The opinion and order of the Court of Criminal Appeals of Alabama reversing and remanding the Dallas County Circuit Court's order is reported as follows:

> State v. McReynolds, [Ms. CR 92-725 (August 13, 1993), ___ So.2d ___ (Ala. Cr. App. 1993)]

A copy of this opinion is submitted as Appendix "B" hereto.

The order of the Supreme Court of Alabama denying the writ of certiorari sought by the State of Alabama to review the above opinion and order is reported with the above opinion. A copy of the same is submitted as Appendix "C" hereto.

JURISDICTION

The order of the Supreme Court denying review was issued on December 30, 1993, and this petition is filed within ninety (90) days of said date. This Honorable Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Alabama Courts believed their decisions were mandated by the prohibition against unreasonable searches and seizures of the Fourth Amendment to the United States Constitution and Section 1 of the Fourteenth Amendment to the Constitution of the United States. Said constitutional provisions read:

AMENDMENT IV

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

AMENDMENT XIV

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS INVOLVED

The Respondent is indicted under Code of Alabama 1975, §§13A-12-212(a)(1) and 13A-12-213(a)(2), copies of the same being submitted here in Appendix "D." The validity of these statutes is not at issue here.

STATEMENT OF THE CASE

This is an appeal by Daniel McReynolds (hereinafter "Respondent McReynolds") from his conviction in Dallas County Circuit Court for one count of possession of controlled substances, and one count of first degree possession of marijuana. On February 13, 1992,

the grand jury of Dallas County, Alabama, indicted Respondent McReynolds on one count of possession of a controlled substance in violation of Code of Alabama 1975, §13A-12-212(a)(1) and one count of first degree possession of marijuana in violation of Code of Alabama 1975, §13A-12-213(a)(2). (CR. 3-4)[1] On March 9, 1992, Respondent McReynolds was formally arraigned and entered pleas of not guilty to both counts. (CR. 5)

Prior to trial, Respondent McReynolds filed a Motion to Suppress certain drug evidence obtained by the State incident to an investigatory stop of Respondent's automobile which had occurred on December 21, 1991. (CR. 8-15) A hearing was held on Respondent's Motion to Suppress on July 30, 1992, at which time the motion was overruled. (R. 1; 58-83)

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[1]References to the trial transcript will be designated "R."; references to the circuit court clerk's record will be designated "CR.".

On July 30, 1992, a jury was struck in the case of State of Alabama vs. Daniel McReynolds, CC 92-126 (Dallas County Circuit Court), and Respondent McReynold's trial commenced. (R. 1; 84) On July 31, 1992, the jury returned its verdict, finding McReynolds guilty of possession of a controlled substance and first degree possession of marijuana as charged in the State's indictment. (R. 224-225)

A sentencing hearing was held on January 28, 1993, at which time Respondent McReynolds was sentenced, pursuant to the Alabama Habitual Felony Offender Act, to fifteen (15) years imprisonment. (R. 240) Respondent McReynolds gave oral notice of appeal at the time of sentencing. (R. 240) An appeal followed.

On August 13, 1993, the Alabama Court of Criminal Appeals reversed and remanded Respondent McReynolds' conviction. In its opinion, the Court of Criminal Appeals concluded that, when viewed under the totality of the circumstances, certain "tips" given to a Selma, Alabama police detective by his confidential

informant lacked sufficient indicia of reliability so as to provide the reasonable suspicion required for the officer to have legally effectuated the Terry-stop of Respondent McReynold's vehicle which, ultimately, produced the drugs for which Respondent was convicted and which had been the subject of his motion to suppress. On August 27, 1993, Petitioner State of Alabama applied for rehearing and moved for the finding of additional facts.

On September 30, 1993, the Alabama Court of Criminal Appeals overruled Petitioner State of Alabama's application for rehearing without opinion.

Petitioner State of Alabama sought review of the Court of Criminal Appeals' decision and opinion by a petition for writ of certiorari in the Alabama Supreme Court raising the points and questions presented herein. However, on December 30, 1993, the Alabama Supreme Court denied review (Appendix "C").

STATEMENT OF THE FACTS

Immediately prior to Respondent McReynolds' trial on charges of possession of a controlled substance and first degree possession of marijuana, a hearing was held on Respondent's motion to suppress certain drug evidence which the State sought to introduce into evidence against him. (R. 58) Among other things, Detective Roger Goodman, a detective with the Selma, Alabama Police Department's Drug Unit, testified at the suppression hearing that on December 20, 1991, he had received a tip from one of his confidential informants to the effect that Respondent McReynolds had that day "received a package of crack cocaine." (R. 59; 61-62) Detective Goodman further testified that he had received tips from this same informant on "several" previous occasions, and that on "each" of these previous occasions the information received from this informant had turned out to be reliable. (R. 62) Detective Goodman further testified that, on the following day, December

21, 1991, he was contacted again by this confidential informant and given information to the effect that Respondent McReynolds was at that time "out making deliveries" of the crack cocaine he had received the previous day. (R. 63)

In response to this information, Detective Goodman stated that he and another detective, Jimmy Ray Martin, proceeded immediately to go out on patrol looking for Respondent McReynolds. (R. 63) In that Respondent McReynolds was known to both officers, they were able to locate him very quickly, finding him parked in his car at the corner of Duke and Small Streets in Selma talking to another individual who was standing beside the driver's side of Respondent's car. (R. 64-65) Detective Goodman testified that, when it appeared that the individual standing next to Respondent McReynolds' car saw Goodman and Martin in their unmarked police cruiser, the individual quickly walked away in one direction, with Respondent McReynolds quickly pulling out and driving off

down Small Street in his car in another direction. (R. 65-66)

On the basis of their informant's tip, plus what Detective Goodman and his partner Jimmy Martin observed taking place there on Small Street between Respondent and the pedestrian standing next to his car, Detective Goodman turned on his blue lights and proceeded to pull Respondent McReynolds' car over. (R. 66-67) Detective Goodman testified that when he walked up to Respondent's driver's side window, he could see a knife laying on the floorboard of the car's front seat. (R. 67) Upon seeing this, Detective Goodman had Respondent get out of his car and began to "pat" Respondent McReynolds down. (R. 67) In the process of this pat-down search of Respondent McReynolds' outer clothing, both a revolver and packages of cocaine and marijuana were discovered. (R. 68; 95; 120)

SUMMARY OF THE ARGUMENT

In Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), this Court held that an informant's tip which could not be sufficiently verified so as to rise to the level of probable cause could still provide the reasonable suspicion necessary to support an investigatory stop, so long as the tip had been sufficiently verified so as to carry enough "indicia of reliability" to justify the officer's reliance on the tip (emphasis added). Later, in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), this Court adopted a "totality of the circumstances" approach for determining whether an informant's tip could be sufficiently reliable so as to provide probable cause. Under this "totality of the circumstances" approach, the veracity of the informant, the demonstrated reliability of the informant, and the basis for the informant's knowledge were all relevant factors in determining probable cause. However, under the totality of the circumstances, a deficiency in

the State's proof of either the veracity of the informant, the reliability of the informant, or the basis of the informant's knowledge, could still be compensated for in determining the overall reliability of the tip by a strong showing as to the other factors, or by some other indicia of reliability (emphasis added). See Illinois v. Gates, 462 U.S. at 233, 103 S.Ct. at 2329.

Then, in Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), this Court held that the veracity, reliability and basis of knowledge factors for determining whether an informant's tip created probable cause were also relevant in the reasonable suspicion context, provided that allowances were made in applying them there for the **lesser showing** required to meet the reasonable suspicion standard (bold and emphasis added). See Alabama v. White, 496 U.S. at ___, 110 S.Ct. at 2415. In reversing this case on the grounds that the informant's tips in question had not been sufficiently verified so as to support an

investigatory stop, the Alabama Court of Criminal Appeals ignored this Court's command in Illinois v. Gates, supra, and Alabama v. White, Id., that allowances be made by lower courts in their application of the veracity, reliability and basis of knowledge factors for analyzing and determining the reliability of an informant's tip, so as to give effect to the proper application of the reasonable suspicion standard as what this Court has intended it to be -- a lower standard requiring a lesser showing of an informant's tip's reliability than that required to establish the higher standard of probable cause. In other words, the Alabama Court of Criminal Appeals failed to recognize the distinction here between what is required to establish merely reasonable suspicion, and what is required in order to establish probable cause.

ARGUMENT

In Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964) and in Spinelli

v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969), this Court enunciated a two-pronged test for determining whether a tip from an informant could provide the probable cause for a search or an arrest. Under Aguilar and Spinelli, the prosecution had to prove both the informant's veracity or reliability, as well as the basis of the informant's knowledge.

Then, in Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), this Court held that an informant's tip which could not be sufficiently verified so as to rise to the level of probable cause could still provide the reasonable suspicion necessary to support an investigatory stop, so long as the tip had been sufficiently verified so as to carry enough "indicia of reliability" to justify the officer's reliance on the tip. Later, in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the Court abandoned the Aguilar-Spinelli test in favor of a "totality of the circumstances" approach for determining whether an informant's tip could be sufficiently

reliable so as to provide probable cause. Under this "totality of the circumstances" approach, the veracity of the informant, the demonstrated reliability of the informant, and the basis for the informant's knowledge were all still relevant factors in determining probable cause. However, under the totality of the circumstances, a deficiency in the State's proof of either the veracity of the informant, the reliability of the informant, or the basis of the informant's knowledge, could still be compensated for in determining the overall reliability of the tip by a strong showing as to the other factors, or by some other indicia of reliability. See Illinois v. Gates, 462 U.S. at 233, 103 S.Ct. at 2329.

Finally, in Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), this Court held that the veracity, reliability and basis of knowledge factors for determining whether an informant's tip created probable cause were also relevant in the reasonable suspicion context, provided that allowances were

made in applying them there for the lesser showing required to meet the reasonable suspicion standard (emphasis added). See Alabama v. White, 496 U.S. at ___, 110 S.Ct. at 2415. This "allowance-makirg" is what the trial court here correctly did, and is where the Alabama Court of Criminal Appeals made its mistake in holding --

> "In this case, the information from the confidential informant did not "carr{y} enough indicia of reliability to justify the officer's forcible stop" of the appellant. Adams v. Williams, 4076 U.S. 143, 147, 92 S.Ct. 1921, 1924, 32 L.Ed.2d 612 (1972) Here, the deficiency in one factor was not compensated for by a strong showing of the informant's veracity or by some other indicia of reliability. The prosecution only minimally established the informant's credibility. 1 W. LaFave, Search and Seizure §3.3(a)(2d ed. 1987) There was no showing that the information was reliable and there was nothing to show how the informant obtained his information. There simply was no other indicia of reliability.
>
> There was no corroboration by independent police investigation of the information supplied by the informant. The "tip" was extremely general and was almost impossible to corroborate unless the police actually observed the appellant selling drugs, which they did not. The informant did not provide a description of the appellant's

> automobile, the place or place where he would be 'making deliveries,' the time those deliveries would be made, or the people to whom those deliveries would be made. The tip contained no self-verifying detail and was not a statement against the penal interests of the informant.
>
> In this case, there is no indication of the basis of the informant's knowledge; there is no indication of how the informant obtained that knowledge. The prosecution established the informant's 'reliability' or 'veracity' only to a very limited degree. We have little more than a cursory assertion that the informant was reliable. We have no indication of what type of information the informant had previously provided the officer. Indeed, it may have been no more than that provided here.

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Had the Alabama Court of Criminal Appeals made the "allowances" called for by the reasonable suspicion-investigative stop context in which this issue arose, rather than stridently holding in its opinion to an over-analysis of the various indicia of reliability present (or lacking) in this case as if this case were one where the indicia of reliability present had to be sufficient so as

to support a finding of probable cause to make an warrantless arrest or probable cause to conduct a warrantless search, its conclusion surely would have been different.

In addition to this, some of the assumptions reached by the Alabama Court of Criminal Appeals about these indicia of reliability were simply incorrect. For instance, the Court of Criminal Appeals held that "(t)here was no corroboration by independent police investigation of the information supplied by the informant." Id. at 7. This conclusion totally ignores the fact that, after learning that Respondent McReynolds was out making drug deliveries, the police officers themselves immediately went out on the streets to attempt to corroborate their tip, which they most certainly did when they found Respondent engaged in a street corner conversation with an individual who, along with Respondent McReynolds, quickly vacated the area when they realized they were being observed by the police. The Court of Criminal Appeals also

held that the informant's tips here were lacking reliability because they did not provide a description of the place or places where Respondent McReynolds would be making deliveries or the time those deliveries would be made. This, too, is incorrect. The place was out on the street "riding around delivering drugs", and the time was "that morning". (R. 60; 63)

Finally, the Court of Criminal Appeals complained that the tips in question contained no self-verifying detail such as were present in Alabama v. White, supra. However, the fact that the police were able to locate Respondent McReynolds out on the street, engaged in a conversation with a pedestrian who quickly walked away in a furtive manner as soon as he saw he and Respondent McReynolds were being observed by the police, has to act, to some extent, as a self-verifying factor in the context of these particular tips and the totality of these particular circumstances.

In Alabama v. White this Court recognized a set of dynamics that were very similar to those

at play in Respondent McReynold's case. The Court stated:

> The Court's opinion in Gates gave credit to the proposition that because an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity. 462 U.S., at 244, 76 L.Ed.2d 527, 103 S.Ct. 2317. Thus, it is not unreasonable to conclude in this case that the independent corroboration by the police of significant aspects of the informer's predictions imparted some degree of reliability to the other allegations made by the caller.

496 U.S. at 332, 110 S.Ct. at ____, 110 L.Ed.2d at 310.

CONCLUSION

The tips received here by Detective Goodman were provided to him not by an anonymous person, but by someone whom Detective Goodman knew, a person whom Detective Goodman had received tips from previously, and whose previous tips had all proven to be reliable. (R. 62) This information was then coupled with the fact that the tips at issue here also provided Detective Goodman with both "where" and

"when" Respondent McReynolds was to be engaged in an illegal activity -- i.e., out on the street "riding around delivering drugs" and "that morning". All of this must then be viewed in the context of Detective Goodman's effort to corroborate these tips by locating Respondent McReynolds and observing him engaged in a street corner conversation with another individual. Admittedly, it is entirely possible for a street corner conversation to be totally innocent, and to provide nothing in the way of corroboration of all of the above. However, the furtive movement of both the pedestrian and Respondent McReynolds in quickly walking and driving away, respectively, once they knew they were being observed by the police, is the factor which, when viewed in the totality of all the other circumstance, gave the police officers an articulatable reason to believe that Respondent McReynolds was engaged in an illegal activity, thus providing them with the reasonable suspicion they needed to be able to conduct the

investigatory stop which, ultimately, led to Respondent McReynolds' arrest.[2]

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[2] In Sterling v. State, 421 So.2d 1375 (Ala.Cr.App. 1982), the Alabama Court of Criminal Appeals observed:

> The necessity of the stop and seizure must be viewed in light of the particular invasion which the (investigatory) stop and seizure involves. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The governmental interest which allows official intrusion upon a private citizen's Fourth Amendment rights is that of effective law enforcement. The individual citizen is protected against unreasonable searches and seizures. However, in certain situations, not only is an invasive stop reasonable, but is merely a minor inconvenience and a petty indignity compared to the government's greater interest in crime prevention and detection. Terry v. Ohio, supra.

421 So.2d at 1378-79. And so it should have been in this case. This is not a case where an "end" is being sought to justify a "means". What we have here is a situation where the authorities were simply the beneficiaries of their own preparation and police work, as well as a little good fortune. Their preparation came in having developed a relationship with a confidential, reliable informant who knew what he/she was talking about when he/she said Appellant McReynolds was "out making deliveries". Their good work came from being fast-acting enough to be able to locate and observe Appellant engaged in an activity reasonably reflective of what the informant said he would be doing. And, finally,

(Footnote continued)

In conclusion, Your Petitioner, the State of Alabama, respectfully submits that in this case the Alabama Court of Criminal Appeals and the Alabama Supreme Court ruled contrary to the previous decisions of this Honorable Court.

(Footnote Continued)
they were simply fortunate enough (or Respondent McReynolds unfortunate enough) to, during the course of a routine investigatory stop, find a knife in the floor of Respondent's car in plain view, which reasonably led to a pat-down of Appellant's outer clothing for other weapons, which in turn led to the discovery of a pistol in Respondent's coat pocket, and then, ultimately, to bags of cocaine and marijuana which fell out of Respondent's pocket when the pistol was removed.

This time it was the police who could be considered to have been lucky; next time maybe it will be the suspect/motorist who, though carrying drugs and weapons, will be lucky enough to have them all safely tucked out of sight when he is stopped by the police under similar circumstances. In any event, however, the relative "luck" of the parties involved in no way changes the fact that, under the totality of these circumstances, the tips received by the police here, when combined with their independent efforts at corroboration, were shown to the trial court to be sufficiently reliable so as to support the officer's reasonable suspicion that Respondent McReynolds was, at the time of the investigative stop, engaged in an unlawful activity in their presence.

Therefore, your Petitioner prays that this Honorable Court will issue a writ of certiorari and will review the matters complained of herein and reverse the decisions of said appellate courts of Alabama.

Respectfully submitted,

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BY:

_____
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